



New Motor Vehicle Board

In-Site

January 2006

A Publication of the California New Motor Vehicle Board

06.1 Edition

PRESIDENT'S YEAR END MESSAGE



David W. Wilson, President

As the year comes to a close, I would like to reflect on what a pleasure it has been to serve as the Board's President. The Board and staff have upheld the mission of resolving disputes in an efficient, fair, and cost-effective manner.

I am happy to report that the Board is continuing to accomplish its goal of staying up to date on the evolving issues facing this industry. The Board's Fourth Annual Industry Roundtable was an overwhelming success with more participants than in prior years. Buoyed by this accomplishment, the Board is already planning the Fifth Annual Roundtable for April 4, 2006.

The Board continues to operate in an efficient manner in light of California's ongoing fiscal difficulties. We developed and implemented a number of creative ways to cut costs while remaining responsive to the automotive industry. For example, a cost analysis was done on the Board's library purchases. Since the implementation of internet access, many of these library purchases are now available online, thus raising the question of the need for hard copy form. After staff review, the outcome of the analysis resulted in a 44% savings on such purchases.

Little acknowledgement is given to the tireless work of the Board members as individuals. Each is busy running their day-to-day business; yet they are willing to devote time and energy to public service with token compensation. The Board continues to function cohesively, and I truly enjoy working with each and every one of them.

Lastly, but certainly not least, I would like to thank the staff for their outstanding performance. As a team they

have insured that disputes are processed fairly, efficiently and expeditiously.

I am greatly enjoying my tenure as president of the New Motor Vehicle Board and look forward to continuing my service to the industry.

NOVEMBER 16, 2005 GENERAL BOARD MEETING HIGHLIGHTS

The New Motor Vehicle Board held its last meeting of the year on November 16th in San Francisco. At that meeting, the members considered a number of case management as well as administrative matters.

Soutar's Nissan

In *Soutar's Nissan, a California corporation v. Nissan North America, Inc., (Protest No. PR-1825-02)*, Nissan sent a letter to Soutar's Nissan on March 1, 2001, informing Soutar's that Nissan had decided to do what it called "non-designate the PMA [Primary Market Area]", that is, to cease having Nissan represented in the geographic area in which Soutar's is located, the Barstow PMA. The cessation (termination of the franchise) would occur upon any attempt to sell or transfer any interest of the Dealer or its owners, or upon "dealer's demise". The protest asserted that the letter of March 1, 2001, was an attempt by Nissan to modify the terms of the franchise. After the protest was filed, Nissan sent a second letter (October 21, 2003) purportedly in clarification of the first letter.

Nissan's first motion to dismiss was denied. Nissan's second motion was denied because Nissan had not established as a matter of law that the non-designation letters of March 1, 2001, and October 21, 2003, stated only what the franchise terms provided.

On June 2, 2005, Nissan issued two more letters. One of the June 2, 2005, letters rescinded the first two letters (March 1, 2002, and October 21, 2003) and the second

CAR BUYER'S BILL OF RIGHTS

AB68, Car Buyer's Bill of Rights, will go into effect on July 1, 2006. It contains many changes that will impact the daily operations of dealerships. These changes include a 2-day contract cancellation option on used cars; a yield spread cap; payment packing prohibition and numerous disclosure requirements. The following paragraphs give an abbreviated summary of AB68, but are not all encompassing of the bill's content.

The 2-day cancellation *does not* apply to new vehicles, motorcycles, recreational vehicles, wholesale or commercial transactions, nor does it apply to leases. This is not an automatic right of rescission. Dealers are only required to offer the contract cancellation agreement and can charge the customer pursuant to certain criteria involving the cash price of the vehicle. In addition, should the customer exercise their right to cancel the contract, the dealer may also collect a restocking fee, again pursuant to criteria involving the cash price of the vehicle. The contract cancellation option agreement is a separate document with specific terms and mandated disclosures.

The bill limits the amount of profit that dealers can retain when they sell conditional sales contracts 2.5% for

contracts up to 60 months, and 2% for deals exceeding that length.

Since many consumers are overwhelmed by the multitude of documents and the length of the conditional sales contract they are required to sign, AB68 helps to alleviate this confusion by specifically defining the items to be disclosed on the contract. Dealers must provide the consumer with a document comparing the "Installment Payment INCLUDING Listed Items" and the "Installment Payment EXCLUDING Listed Items." This will allow a side-by-side comparison of the proposed monthly payment.

The bill also puts restrictions on the use of the term "certified" or any other similar term if the dealers knows that the odometer is not accurate; the vehicle is a buyback, the title has the words, salvage, flood, junk, or similar title designations; has sustained damage which would impair the use or safety of the vehicle; has frame damage; if the term "certified" or any other similar descriptive term is used in any manner that is untrue or misleading.

IN-SITE CIRCULATION

The Board has made a decision to streamline the circulation of its newsletter. The In-Site is available on the Board's website at www.nmvb.ca.gov. The newsletter is produced quarterly in January, April, July and October of each year. Past editions are also available on its website.



State of California
Arnold Schwarzenegger, Governor

IN-SITE

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Alan J. Skobin,
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Howard Weinberg

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June 2, 2005, letter was another notice of non-designation that, unlike the rescinded first two notices of non-designation, did not contain any statements of what Nissan intended to do or not do in the future.

Nissan in the third motion to dismiss asserted that the protest is moot because the protest challenges the contents of the first two notices of non-designation, both of which have been rescinded. Soutar's filed an amended protest but the amended protest continued to challenge as modifications what Nissan had stated to be Nissan's intentions in the first two letters of non-designation but which Nissan had already rescinded.

Soutar's contends that the current protest is not moot because the controversy resulting from the first two letters still exists.

After considering the briefs and oral arguments, the Public members of the Board adopted the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss as modified. The Protest was dismissed without prejudice instead of with prejudice.

Forty-Niner Sierra Resources

In *Forty-Niner Sierra Resources, Inc. dba Forty-Niner Subaru and Richard E. Wilmshurst v. Subaru of America*, (Petition No. P-452-05), Petitioner requested the Board order DMV to conduct an investigation and exercise its authority over the license of Subaru; that Subaru be placed on probation (by DMV) for a period of three years with the conditions of probation being:

That Subaru report to the Department of Motor Vehicles that Subaru paid all warranty billings pursuant to the findings of the Board;

That Subaru pay all valid warranty billings to dealers within the time required by Vehicle Code section 3065(d) by check to the dealer and that the Subaru mutual account held for each dealer not be used for the credit of valid payments. Warranty debits may be posted to the mutual account;

That Subaru be ordered by DMV to return unauthorized charges made within the last five years to dealers and to return any shortage in warranty parts and warranty payments; and,

That Subaru be ordered to secure an order, in writing from the dealer principal, for all materials to be charged to the franchisee by Subaru including advertising, contests, promotional materials, training materials,

showroom displays, and other materials, prior to charging such materials to the dealer account and shipping such materials.

After considering the briefs and oral arguments, the Public members of the Board denied the relief requested in the Petition. This matter was closed.

Kia Motors America, Inc. v. New Motor Vehicle Board; S & C Motors, Inc., Real Party in Interest, Sacramento County Superior Court No.05CS00283

Kia filed a writ petition challenging the Board's Decision in Protest No. PR-1894-04. The Judge's initial Proposed Decision found in favor of Kia Motors, concluding that the program at issue was not a franchisor's incentive program as commonly used and defined in the industry. The Board remanded the Proposed Decision with instructions that the Judge consider the merits of the protest and that the Judge's determination of the meaning of a franchisor's incentive program not be dispositive of the case. After remand, the Judge issued a Proposed Decision sustaining the protest, which was adopted by the Public members of the Board. The Board adopted the Proposed Decision as its Final Decision on January 26, 2005. This Petition for Writ of Administrative Mandate followed.

On October 13, 2005, the court issued its final ruling granting the writ on the ground that the Board did not have jurisdiction to hear and decide the protest. The court found that there was no substantial evidence in the record to support the Board's decision that the matter involved a "franchisor incentive program", and there was no reasoned analysis or explanation in its decision to support deference to the Board's special expertise as to its interpretation of the term "franchisor incentive program", to place the matter within the Board's jurisdiction.

In light of the court's ruling, the Public members of the Board decided to file a Notice of Appeal. The Office of Attorney General represents the Board in this matter and will file the notice by the end of December 2005.

Administrative Matters

The Board unanimously approved the presentation of Resolutions to Joan Borucki, former Director, Department of Motor Vehicles, and Tom Novi, retired Board Executive Director. These resolutions are scheduled for presentation at the March 8, 2006, General Meeting in Sacramento.

A number of staff reports were given on a variety of topics. Bill Brennan, Board Executive Director, reported on the 2006 schedule of Board education. The Board

See General Board Meeting, page 4

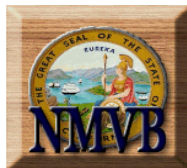
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anticipates touring the California Fuel Cell Cooperative, Village RV, and the New United Motor Manufacturing Inc. (NUMMI) Plant.

The Board adopted proposed revisions to the assignment of cases to Board Administrative Law Judges. Given the shortage and availability of Judges, an interim system of assigning Judges based upon a Merits and MSC (Mandatory Settlement Conference) Judge Assignment Log was approved. All of the Judges (Archibald, Lopez, Prod) were assigned to the respective logs. Marilyn Wong, semi-retired Board Judge, will be utilized in the event the other Judges are unavailable.

Howard Weinberg, Board General Counsel, reported that the Board staff has been preparing two versions of proposed decisions. One version contains what has been referred to as "citations to the record" and the other version does not. The cited version is used internally by staff in reviewing and editing an Administrative Law Judge's draft proposed decision prior to the final proposed decision being forwarded to the Board members for consideration. Both versions are retained in the Board's files in the regular course of business. After a lengthy discussion, the Board members requested that this matter be agendaized for consideration at its next meeting.

The following meetings for 2006 were tentatively selected: January 26, 2006, Los Angeles - General Meeting; March 8, 2006, Sacramento - General Meeting; March 8, 2006, Roseville - Special Meeting, Tour of Village RV; April 4, 2006, Sacramento - Special Meeting (5th Annual Industry Roundtable) and California Motor Car Dealers Association Event; June 21, 2006, San Francisco - General Meeting; September 13, 2006, Los Angeles - General Meeting; November 15, 2006, San Francisco - General Meeting; and December 13, 2006, Sacramento - Special Meeting.



**THE GUIDE TO THE
NEW MOTOR VEHICLE BOARD
IS NOW AVAILABLE ON
THE BOARD'S WEB-SITE
WWW.NMVB.CA.GOV.**

AUTOMOTIVE CAREER WEEK

Governor Schwarzenegger proclaimed the week of October 24-29, 2005, as Automotive Career Week in California, acknowledging the importance of the National Automobile Dealers Association ("NADA") career initiative. He joined nine other governors who had issued similar proclamations in their states. During the week in October, new car dealers across the country talked to teens about jobs and career opportunities in the automotive industry. California employs more than 150,000 people in the industry, which continues to grow strong, creating the need for educated and highly skilled professionals. The teens heard first-hand how the business operates in all areas, including sales, service and finance. According to Ed Fitzpatrick, Chairman of the California Motor Car Dealers Association, many young people were surprised to learn that dealerships offered such a wide variety of career opportunities. For more information and a list of dealer participants, visit www.nada.org/careers.

JOAN BORUCKI LEAVES DMV

Joan Borucki was recently appointed chair of the Unemployment Insurance Appeals Board, after serving as the Director of the Department of Motor Vehicles ("DMV") just short of one year. A nationwide search is being conducted to fill the position at DMV. Ms. Borucki has more than 25 years of experience in California state government, beginning her state service in 1980. Prior to her appointment at DMV, she was a team leader for the California Performance Review and served for nearly two years as chief deputy director of the California Transportation Commission. The Board has invited Ms. Borucki to its March 8, 2006, General Meeting in Sacramento to present her with a resolution of appreciation.

JUST A REMINDER . . .

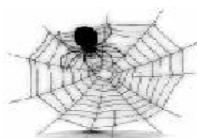
The rainy season is upon us now. Just a reminder that a new law went into effect July 1, 2005, requiring that headlights be turned on when using windshield wipers while driving.



EXECUTIVE DIRECTOR ATTENDS RV DEALERS CONFERENCE

[illegible]

Why not visit us



on the web...

...at www.nmvb.ca.gov

REVENUE

NEW MOTOR VEHICLE DEALER	
Annual Fee:	\$ 292,297.00
NEW MOTOR VEHICLE BOARD	
Manufacturer/Distributor Annual fee:	837,937.76
NEW MOTOR VEHICLE BOARD	
Filing fees:	5,200.00
Document Requests:	390.00
Arbitration Cert. Program Reimbursement:	-0-

COMPUTER CONVERSION AT BOARD

The Board has determined that in order to continue to meet the needs of our constituency, we will be soon be supported by the Department of Motor Vehicles' (DMV) computer operations.

Board staff met with DMV's Network Support Manager and his staff in late November of last year to discuss the conversion. It is anticipated that the transition will go smoothly and, in addition, there will be no cost to the Board. The only visible change will be the email address which, instead of nmvb@pacbell.net, will be nmvb@nmvb.ca.gov.

CMCDA 2006 BOARD ELECTION

Board Dealer Member Robert V. Branzuela has been elected to the California Motor Car Dealers Association Board of Directors for Region II. Robert Branzuela has served on the New Motor Vehicle Board since August 7, 2002 and is chair of the Administration Committee. Mr. Branzuela is the Managing partner and a founder of Veracom Automotive Group, a dealer of luxury automobiles, since 1984. Former Board Dealer Member, Fritz Hitchcock of Hitchcock Automotive Resources, was elected to Region V. Congratulations from the Board. Robert and Fritz!

UPCOMING BOARD MEETINGS

General Board Meeting

*January 26, 2006
Los Angeles

General Board Meeting

*March 8, 2006
Sacramento



Special Board Meeting

April 4, 2006*
Sacramento

5th Annual Industry Roundtable

(*Board Meeting dates and locations are subject to change. A meeting agenda with time and location details is mailed 10 days prior to the meeting and is posted on the Board's website.)



Susanna Badalyan-Deus, Heather Collins, Eugene Ohta

2005 CSECC OUTCOME

Each year the California State Employee Charitable Campaign ("CSECC") provides an opportunity for state employees to contribute and learn how their efforts benefit the programs and the agencies it serves. These agencies provide a wide variety of services, from disaster relief to treatment and prevention of child abuse.

Board staff held fundraising events throughout the year for the 2005, CSECC Campaign, which was chaired by Heather Collins, Senior Mediation Representative, and Co-Chaired by Susanna Badalyan-Deus and Eugene Ohta. Over 10 opportunity basket drawings and events were held, and more than \$1,260.00 in cash donations were raised. The Board would like to extend its sincere gratitude to this year's sponsors who generously donated many of the items for the baskets: Elephant Bar, Frank Fat's Restaurant, Hollywood Video, Hornblower Cruises & Events, Raley's, Sacramento Kings, Sands Regency Hotel & Casino, San Francisco 49ers, San Francisco Marriott, Scandia Sports, Inc., and Starbucks.

Due to the generosity of the staff, who donated their time, food, opportunity basket items, and spirit, the campaign was successful, enjoyable, and fun. In addition, 100% staff participation was once again achieved. Special thanks are also given to Co-Chairs Susanna and Eugene, whose dedication and enthusiasm contributed greatly to the campaign's success.



Wayne Kaweski

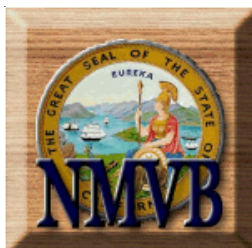
BOARD HIRES NEW EMPLOYEE

Wayne Kaweski has joined the Board's staff as an Office Assistant. He will be providing office support to the Board's Mediation Services Program, and will also begin training to become a Mediation Representative.





**THE NEW MOTOR
VEHICLE BOARD
WISHES YOU A
HAPPY AND PROSPEROUS
NEW YEAR**



New Motor Vehicle Board